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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

MOBIL OIL CORPORATION, THE RETIREMENT PLAN OF MOBIL OIL CORPORATION, and REX ADAMS,

Petitioners,

vs.

GERALD W. CHRISTOPHER, CHARLES L. PRUNTY, and BILLY G. TURNER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF *AMICUS CURIAE* OF THE ERISA INDUSTRY COMMITTEE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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With the consent of the parties, The ERISA Industry Committee ("ERIC") respectfully submits this brief *amicus curiae* in support of the petition for writ of certiorari of Mobil Oil Corporation, the Retirement Plan of Mobil Oil Corporation, and Rex Adams.

THE INTEREST OF THE *AMICUS CURIAE*

ERIC is a nonprofit association of more than one hundred companies doing business in a wide variety of United States industries. A list of ERIC's members is set forth in the Appendix to this brief.

ERIC's membership comprises a broad cross-section of major firms that maintain employee pension and welfare plans covered under

the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.* All of ERIC's members do business in more than one state, and some members maintain pension and welfare plans that provide benefits to employees in all fifty states. Like the plan in this case, many of the pension plans sponsored by ERIC's members provide that employees who retire or otherwise terminate employment may select an immediate lump-sum distribution in lieu of such alternatives as a lifetime monthly pension or deferred distributions.

ERIC and its members accordingly have a substantial interest in seeking a sound and uniform interpretation of ERISA in cases, such as this one, that include issues of great importance in the application of ERISA to pension plans.

REASONS FOR GRANTING THE WRIT

Because of the breadth of ERISA's regulation of pension and other employee benefit plans, ERISA's statutory definition of who is a "participant" with standing to sue in federal court to remedy alleged violations is of fundamental importance. The decision of the Fifth Circuit on this issue in this case is in conflict with the Tenth Circuit's decision in *Mitchell v. Mobil Oil Corp.*, 896 F.2d 463 (10th Cir.), *cert. denied*, 111 S. Ct. 252 (1990), and appears to conflict with both the Court's ruling in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989), and decisions in other Circuits following *Firestone*. In *Mitchell*, which involved the same nucleus of operative facts as this case, a former employee who had received all his accrued plan benefits was held not to be a "participant" with standing. By contrast, the Fifth Circuit in this case has held that employees who have similarly received all their accrued benefits may establish standing under certain circumstances.[1]

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[1] In addition to *Mitchell*, the Fifth Circuit's decision is in direct conflict with decisions of the Fourth Circuit, *Stanton v. Gulf Oil Corp.*, 792 F.2d 432, 435 (4th Cir. 1986) (rejecting "but for" test for standing), and the Ninth Circuit, *Freeman v. Jacques Orthopaedic & Joint Implant Surgery Medical Group, Inc.*, 721 F.2d 654, 655-56 (9th Cir. 1983) (same), and conflicts with the reasoning of the Seventh Circuit in *Winchester v. Pension Committee of Michael Reese*, 942 F.2d 1190, 1192-93 (7th Cir. 1991) (plaintiff not a "participant" by virtue of separate discrimination suit seeking reinstatement).

A resolution of this conflict is critical to establish whether former employees who have received all their accrued pension benefits as of the cessation of their employment nevertheless retain the status of "participants" with standing to bring ERISA actions. Census Bureau figures show that approximately 22 million employees participate in plans allowing lump sum distributions of accrued pension benefits upon retirement or other termination of employment.[2] Unless the conflict of decisions is resolved, neither employees considering whether to elect an immediate lump sum, nor employers whose plans make such distributions, can know whether the distribution will end the employee's status as a plan "participant" to whom the employer and plan have continuing obligations under ERISA.

1. A split among the Circuits on a question so crucial as the meaning of "participant" severely impairs the efficacy of ERISA for ERIC's members and other multi-state employers, and places them in an untenable position.

An employer must weigh the value of a benefit plan to the employees against the costs of establishing and maintaining it, including potential legal liability. Before ERISA, many plans were subject to different — and often conflicting — state statutes and regulations. The inherent difficulties and uncertainties acted as disincentives for employers to provide the best forms of employee benefits. *See Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9-11 (1987).

ERISA resolved this problem by establishing uniform nationwide standards. In addition, Congress included a broad preemption provision that has been interpreted consistently in accordance with this purpose.

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[2] Joseph S. Piacentina, Employee Benefit Research Institute Issue Brief No. 98, *Preservation of Pension Benefits*, at 3 (Jan. 1990) (citing United States Census Bureau May 1988 Current Population Survey). These employees are typically offered a lump sum distribution as an option along with such alternatives as deferred distribution or an annuity, because, except for certain small benefits, plans are generally prohibited by law from requiring employees to receive an immediate lump sum distribution. *See* ERISA §§ 203(e), 205(a) & (g), 29 U.S.C. §§ 1053(e), 1055(a) & (g).

> It is . . . clear that ERISA's pre-emption provision was prompted by recognition that employers establishing and maintaining employee benefit plans are faced with the task of coordinating complex administrative activities. A patchwork scheme of regulation would introduce considerable inefficiencies in benefit plan operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them.

Fort Halifax, 482 U.S. at 11. This Court "ha[s] not hesitated to enforce ERISA's pre-emption provision where state law created the prospect that an employer's administrative scheme would be subject to conflicting requirements." *Id.* at 10. The conflict resulting from the Fifth Circuit's decision similarly thwarts Congressional intent by restoring inconsistency and by adding vast, unquantifiable potential grounds for liability for damages and litigation costs.

Roughly a million or more employees terminate employment each year and receive all the plan benefits to which they are entitled.[3] Some of them may have grievances they wish to pursue through a claim for wrongful discharge. Under the Fifth Circuit's holding in this case, these employees may now have standing to bring their claims in federal courts in the Fifth Circuit, while they do not have standing to do so in other Circuits. It is essential for employers and employees alike that the law on such a fundamental issue be consistent in all the Circuits.

2. The issue here — whether former employees who have received all the accrued plan benefits to which they are entitled have standing under ERISA — has important implications for the volume of litigation in the federal courts. Under the Fifth Circuit's standard, almost any employee who has participated in an ERISA plan and received all his or her accrued plan

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[3] *See* Joseph S. Piacentina, *supra*, at 15, 19 (Jan. 1990) (3.4 million employees received lump sum distributions between 1985 and May 1988).

benefits can now convert a garden-variety state-law cause of action for wrongful discharge into an ERISA case by including a claim for violation of ERISA § 510, 29 U.S.C. § 1140. This claim can then be filed in federal district court, creating new possibilities for forum-shopping. The numerous multi-state plans, including those of ERIC's members, are particularly vulnerable in this regard. *See Patterson v. Shumate*, 60 U.S.L.W. 4550, 4553 (U.S. June 15, 1992) (an "important policy underlying ERISA [is] uniform national treatment of pension benefits.").[4]

3. The Fifth Circuit's decision is wrong on the merits. *Firestone* resolved the question whether former employees who claimed they were improperly denied severance benefits were nonetheless "participants" entitled to receive plan information pursuant to ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), one of ERISA's disclosure provisions. The Court found that the Third Circuit had strayed too far from the language of ERISA § 3(7), 29 U.S.C § 1002(7), in holding that anyone who "*claims to be* a participant or beneficiary" is entitled to such disclosure, *Bruch v. Firestone Tire & Rubber Co.*, 828 F.2d 134, 152 (3d Cir. 1987). Instead, the Court held that

> the term "participant" is naturally read to mean either "employees in, or reasonably expected to be in, currently covered employment," *Saladino v. I.L.G.W.U. National Retirement Fund*, 754 F.2d 473, 476 (2d Cir. 1985), or former employees who "have . . . a

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[4] Under the Fifth Circuit's holding former employees who have received all their accrued benefits can now challenge the employer's conduct in funding the plan or investing plan assets by alleging a wrongful discharge or other discriminatory action in violation of § 510 of ERISA, even though these former employees are not affected by funding or investment decisions. *See* ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) (authorizing "participants" to "enforce any provisions of" ERISA Title I, including funding and fiduciary requirements). While it may be appropriate for former employees who have not yet received all their vested benefits to have standing to enforce ERISA's funding and fiduciary requirements, those who have already received all their benefits have no legitimate interest in maintaining such actions.

> reasonable expectation of returning to covered employment" or who have "a colorable claim" to vested benefits, *Kuntz v. Reese*, 785 F.2d 1410, 1411 (9th Cir.) (*per curiam*), *cert. denied*, 479 U.S. 916 (1986).

Firestone, 489 U.S. at 117.

ERISA allows civil suits only "by a participant or beneficiary." ERISA § 502(a)(1), 29 U.S.C. § 1132(a)(1). To find possible standing for the plaintiffs in this case, the Fifth Circuit therefore found it necessary to hold that the term "participant," which has only a single statutory definition, actually has different meanings for different parts of ERISA, and that *Firestone* defined "participant" for only one purpose. *Christopher v. Mobil Oil Corp.*, 950 F.2d 1209, 1221 (5th Cir. 1992), *petition for cert. filed*, No. 91-1881 (May 26, 1992). But § 510, which the Fifth Circuit interpreted, expressly provides that "[t]he provisions of section 502" —which the Court applied in *Firestone*, 489 U.S. at 116-118 — "shall be applicable in the enforcement of this section." The Fifth Circuit erred in ignoring this Congressional mandate.

While the Fifth Circuit apparently believed that its position was necessary to avoid a "gap" in the enforceability of § 510, there is no such gap.[5] As the Court made clear in *Ingersoll-Rand Co. v. McClendon*, 111 S. Ct. 478, 486 (1990), the "prototypical" § 510 case is one where the plaintiff has been fired before he or she would meet the final requirement for vesting in benefits already accrued. In such a case, the plaintiff meets the *Firestone* standard because there is a colorable claim to those accrued benefits.[6]

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[5] If there were any enforceability gap it would of course be the province of Congress, not the courts, to address the situation. *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987) (ERISA creates a "comprehensive civil enforcement scheme that represents a careful balancing" and provides " 'strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly.' ") (citation omitted).

[6] By contrast, the only claim former employees who have already vested and received all their accrued benefits could bring under § 510 would be

(Footnote continued)

In finding that "participant" has multiple and inherently inconsistent meanings within ERISA, the Fifth Circuit's holding also violates the "normal rule of statutory construction that 'identical words used in different parts of the same act are intended to have the same meaning.' " *Sorenson v. Secretary of the Treasury*, 475 U.S. 851, 860 (1986) (quoting *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87 (1934) (quoting *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932))); *see also Patterson*, 60 U.S.L.W. at 4553-54, (Scalia, J., concurring) ("consistency of usage within the same statute is to be presumed"). This rule is all the more forceful when the word in question has been given a single statutory definition. *See, e.g., Sierra Club v. Clark*, 755 F.2d 608, 613-14 (8th Cir. 1985) (defined term "conservation" must have same meaning throughout Endangered Species Act).

The Court of Appeals apparently believed that its departure from the holding in *Firestone* was called for by the subsequent decision in *McClendon*, 111 S. Ct. at 486. *McClendon*, however, was an action under ERISA § 510 by an individual who alleged that he *had not received* all his accrued plan benefits; it does not provide any support for authorizing actions by former employees *who have received* all their accrued plan benefits.[7]

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premised on the argument that they were terminated to prevent them from continuing to earn additional vested benefits. Such a claim is essentially indistinguishable from a claim that an employee was "wrongfully" terminated for the purpose of saving the employee's salary – a perfectly legitimate ground for making an employment decision.

While several Courts of Appeals have indicated that under some circumstances such a claim might be brought, *e.g., Conkwright v. Westinghouse Electric Corp.*, 933 F.2d 231, 236-37 (4th Cir. 1991) (stating § 510 provides such a cause of action, but plaintiff failed to meet burden of showing employer's intent), we respectfully submit that Congress never intended to create such an extraordinary cause of action, which would open the gates of the federal courts to any discharged employee who happened, at some point, to have had some relationship to an ERISA plan. It is therefore not surprising that Congress did not provide standing for former employees to bring such claims in federal court.

[7] The suggestion that *McClendon* expanded ERISA's remedial scheme by allowing suits for damages has been rejected by every appellate court that has

(Footnote continued)

CONCLUSION

ERIC on behalf of its members respectfully urges that the petition for writ of certiorari should be granted.

Respectfully submitted,

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considered it. *Novak v. Andersen Corp.*, No. 91-1957MN, 1992 U.S. App. LEXIS 6463 (8th Cir. Apr. 9, 1992); *Harsch v. Eisenberg*, 956 F.2d 651, 659-60 (7th Cir. 1992), *petition for cert. filed*, No. 91-1835 (May 11, 1992); *McRae v. Seafarers' Welfare Plan*, 920 F.2d 819, 821 n.7 (5th Cir. 1991); *accord Roberts v. Thorn Apple Valley. Inc.*, 784 F. Supp. 1538, 1541 (D. Utah 1992).

APPENDIX

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THE ERISA INDUSTRY COMMITTEE

MEMBER LIST

June 1992

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Allied-Signal Inc.
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